DAVIS HOBSON

IBLA 76-89 Decided December 23, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-8300.

Affirmed.

1. Alaska: Native Allotments--Withdrawals and Reservations: Power Sites

A Native allotment may not be approved where the land applied for has been within a power site withdrawal long prior to the initiation of applicant's use and occupancy.

APPEARANCES: Henry W. Cavallera, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Davis Hobson appeals from a decision of the Alaska State Office, Bureau of Land Management, dated June 18, 1975, rejecting his Native allotment application AA-8300. The State Office determined that the land for which Hobson had applied was not "vacant, unappropriated, and unreserved" public land as required by the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

[1] Appellant's application, signed August 23, 1971, asserts that he initiated use and occupancy in 1960. The State Office determined that the land for which the appellant applied is included within Powersite Reserve No. 485 which has segregated the land from settlement under the public land laws since April 1, 1915. 1/ A

1/ The record indicates that a small corner of the land applied for is affected by right-of-way AA-8791.

Native allotment may not be approved where the land applied for is within a power site withdrawal and the applicant has failed to show 5 years' use and occupancy prior to the effective date of the withdrawal. Herman Joseph, 21 IBLA 199 (1975).

The State Office also noted that the appellant was born on August 29, 1952, 2/ long after the withdrawal of the land. The appellant was only 8 years old at the time he claimed to begin his use and occupancy of the land applied for, and this is too early an age to initiate use and occupancy of the nature required by the Native Allotment Act. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974). Moreover, at the time of the asserted commencement of use and occupancy in 1960, the land in issue was withdrawn from settlement, and it is well established that land so withdrawn cannot be lawfully appropriated by initiation of settlement under the public land laws. David Capjohn, 14 IBLA 330 (1974); see Larry W. Dirks, Sr., 14 IBLA 401 (1974); Elsie May Pikok Crow, 3 IBLA 114 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

2/ Use and occupancy would have to have been commenced prior to April 1, 1910 (i.e., 5 years before the withdrawal and about 42 years prior to appellant's birth) in order to warrant further consideration of the application.